LIBRARY
SUPREME COURT, U.S.

Supreme Court, U. S.
FILED
MAR 8 1976
MICHAEL RODAK, JR., CLERK

No. 75-1029

In the
Supreme Court of the United States
October Term, 1975

KENNECOTT COPPER CORPORATION,
Petitioner,

v.

RUSSELL E. TRAIN, Administrator of the
Environmental Protection Agency,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE FOR THE BAY AREA LEAGUE OF INDUSTRIAL ASSOCIATIONS, INC.

JOHN T. RONAN, III
Tuxedo, New York 10987

H. EDWARD DUNKELBERGER, JR.
THEODORE L. GARRETT
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorneys for Amicus Curiae

March 1976

TABLE OF CONTENTS

Page

Interest of *Amicus Curiae* 1

Reasons For Granting The Writ 2

Conclusion 3

Appendix

TABLE OF CASES

Big Rivers Electric Corporation v. EPA.
523 F.2d 16 (6th Cir. 1975) 2, 3

In the

Supreme Court of the United States

October Term, 1975

No. 75-1029

KENNECOTT COPPER CORPORATION,
Petitioner,

v.

RUSSELL E. TRAIN, Administrator of the Environmental Protection Agency,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF AMICUS CURIAE FOR THE BAY AREA LEAGUE OF INDUSTRIAL ASSOCIATIONS, INC.

INTEREST OF AMICUS CURIAE

The Bay Area League of Industrial Associations, Inc. submits this brief in support of Petitioner Kennecott Copper Corporation. Counsel for both petitioner and respondent, Russell E. Train, have consented to the filing of this brief *amicus* by letters which have been presented to the Clerk of the Court pursuant to Rule 42(2).

BLURRED COPY

BLEED THROUGH

The Bay Area League of Industrial Associations, Inc. ("BALIA") is an incorporated league of industrial corporations with manufacturing facilities located in the San Francisco Bay area. BALIA is a party to rulemaking in which the Environmental Protection Agency ("EPA") has proposed formally to disapprove certain provisions of the Bay Area implementation plan solely on the grounds that it permitted ground level monitoring controls, based upon the same rationale as EPA's disapproval of the Nevada regulations involved in this case.

REASONS FOR GRANTING THE WRIT

The decision below involves a question of continuing and overriding importance concerning the implementation of the Clean Air Act which should be reviewed by this Court.

This case is one of several cases in which EPA has made it clear that it would disapprove state implementation plans, although the plans provide for the attainment and maintenance of the national ambient air quality standards, if the plans do not rely upon "constant emission controls" and that EPA will not permit other types of emission controls.

The issues presented in this case are also before this Court in connection with previously filed petitions by a group of affected electric utilities (No. 75-774, October Term 1975) to review the decision of the Court of Appeals in *Big Rivers Electric Corporation* v. *EPA*, 523 F.2d 16 (6th Cir. 1975).[1] Because of the importance of these issues to BALIA and its members, on January 16, 1976, BALIA filed a brief *amicus curiae* on behalf of the petitioners Big Rivers Electric Corporation, *et al.*[2]

---

[1] A petition for a writ of certiorari to review this decision has also been filed by the Tennessee Valley Authority (No. 75-787, October Term 1975).

[2] In response to the two *Big Rivers* petitions filed in February 1976, EPA took the position that the case is moot and that the judgment

(continued)

It is respectfully submitted that the decision below was erroneous on questions of great importance to *amicus curiae* and to other industries affected by state implementation plans. Rather than repeat here arguments which we have made previously, we will instead refer the Court to the brief *amicus curiae* filed by BALIA in the *Big Rivers* case, which appears below in the Appendix.

CONCLUSION

For the reasons set forth herein, and in our brief *amicus* in *Big Rivers*, which appears in the attached Appendix, a writ of *certiorari* should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

JOHN T. RONAN, III
Tuxedo, New York 10987

H. EDWARD DUNKELBERGER, JR.
THEODORE L. GARRETT
Covington & Burling
888 Sixteenth Street, N.W.
Washington, D.C. 20006

Attorneys for Amicus Curiae

March 1976

---

[2] (continued)
should be vacated and, in the alternative, that if the Court does not agree that the case is moot the petitions should be denied.

Although we do not wish to respond here to the Government's suggestion of mootness in the *Big Rivers* case, to our knowledge there has been no such suggestion in the present case. Further, EPA has made it clear that the Agency will be taking further actions to disapprove state plans which contain optional control features. *See* Appendix at 5.

BLURRED COPY